



BUILDING FACADE IMPROVEMENT PROGRAM
SAN BRUNO REDEVELOPMENT AGENCY

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Form 3

**CONDITIONAL GRANT AGREEMENT BETWEEN
AGENCY AND APPLICANT**

THIS CONDITIONAL GRANT AGREEMENT (the "Agreement") dated as of this _____ day of _____, 2004, is entered by and between the SAN BRUNO REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency") and _____, a private business owner (the "Applicant").

RECITALS

- A. Agency has adopted a Building Facade Improvement Program in order to provide grants to certain owners or tenants of eligible buildings who design and construct improvements to the facades of their buildings.
- B. Applicant is the tenant/owner of that certain building located at _____ (the "Building").
- C. Applicant has submitted an application to the Agency pursuant to the Building Facade Improvement Program Guidelines for a grant for certain facade improvements to the Building.
- D. Applicant has gone through the application process set forth in the Guidelines and has submitted final approved plans for façade improvements dated _____, 2004 [*insert as applicable*] and has obtained a Building Permit dated _____, 2004 and Architectural Review Committee approval in the form of a Letter of Approval dated _____, 2004 (the "Façade Improvements").
- E. Applicant and Agency desire to enter into this Agreement to set forth the terms and conditions of: Applicant's construction, installation and maintenance of the Façade Improvements; and Agency's grant of matching funds to Applicant upon satisfactory completion of the Façade Improvements, as set forth herein.
- F. This Agreement is in furtherance of the objectives of the San Bruno Redevelopment Plan. The Façade Improvements will improve the appearance of the San Bruno Redevelopment Project Area and help eliminate physical and economic blight in the Project Area and stimulate private investment.



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NOW, THEREFORE, Applicant and Agency hereby agree as follows:

1. Completion of Façade Improvements. Applicant shall complete or cause its contractors and/or subcontractors to complete the Façade Improvements in accordance with all approved plans and permits (the "Work") within 180 days of the date of this Agreement.

2. Grant Disbursement.

2.1 Grant Amount. Subject to satisfaction of the conditions precedent set forth in section 2.2, Agency shall disburse a grant to Applicant in the amount of fifty percent (50%) of the Improvement Costs (defined below) up to a maximum of _____ Dollars (\$_____) (the "Grant"). The Improvement Cost shall be the cost of the design, construction and installation of the Work, including, but not limited to, costs associated with the development of construction documents, construction management fees, professional, legal and architectural fees, and City permit fees. Subject to satisfaction of the conditions precedent set forth in section 2.2, Agency shall disburse a an additional rebate to Applicant in the amount of ten percent (10%) of the Grant for soft costs related to development of construction documents, construction management fees, professional, legal and architectural fees, and City permit fees up to a maximum of _____ Dollars (\$_____) (the "Soft Cost Rebate").

2.2 Conditions Precedent to Grant Disbursement.

a. Completion of the Work. Applicant and his or her contractors and/or subcontractors shall have completed the Work in accordance with approved plans and permits.

b. Submittal. The following documents shall be submitted to the Community Development Department in a form approved by the Housing and Redevelopment Manager:

- i. Completed Grant Request form;
- ii. Invoices and/or contracts documenting the Improvement Cost;
- iii. Cancelled checks or credit card receipts documenting payment of the Improvement Cost;
- iv. Completed Project Architect's Certificate of Compliance form;
- v. Lien waivers from all contractors and subcontractors;
- vi. Copy of approved Final Building Inspection; and
- vii. Photographs of the Building facade(s) prior to and after completion of the Work.

3. Maintenance of Façade Improvements. Applicant, at its sole cost and expense, shall maintain the Façade Improvements in accordance with the terms of this section 3 for five years



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following the date of completion of the Work. Applicant and its maintenance staff, contractors and subcontractors shall maintain the Façade Improvements in conformance and in compliance with the approved plans and permits, as the same may be amended from time to time with the approval of the City, and in accordance with the custom and practice generally applicable to first-class commercial projects located within the City of San Bruno. All such maintenance work shall conform to all applicable federal, state and local laws and regulations for the performance of maintenance.

4. Indemnification. To the fullest extent permitted by law, Applicant shall indemnify, defend, and hold harmless Agency, the City of San Bruno ("City"), its and their elective and appointive boards, commissions, officers, agents and employees (collectively, "Agency Parties"), from any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "Claims") arising, directly or indirectly, from the acts, omissions, negligence or willful misconduct of Applicant or its contractors, subcontractors, employees, representatives or agents. The Agency Parties shall not be deemed to have waived any right against Applicant which it or they may have by reason of the aforesaid indemnity, because of the approval by Agency or City of the plans, specifications and drawings for the Façade Improvements. Applicant's indemnity obligations under this section 4 shall survive the expiration or termination of this Agreement.

5. Insurance. Until completion of the Work and disbursement of the Grant by Agency, Applicant shall take out and maintain or shall cause its contractor to take out and maintain Commercial General Liability and Workers' Compensation Insurance.

a. Commercial General Liability policy in the amount of One Million Dollars (\$1,000,000) combined single limit, or such other policy limit as Agency may approve at its discretion, including contractual liability, as shall protect Applicant, Agency and City from claims for damages. Such policy or policies shall be written on an occurrence form. The Commercial General Liability Policy hereunder shall name the Agency and City and its and their respective officers, agents, employees, and representatives as additionally insureds.

Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Applicant shall furnish Agency with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall contain a statement of obligation on the part of the carrier to notify Agency and City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Applicant shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Agency or City, and the policy shall contain such an endorsement. The insurance policies shall contain a waiver of subrogation for the benefit of Agency and City. The required certificate and endorsement shall be furnished by Applicant to Agency prior to the commencement of any of the Work.

b. Workers' Compensation Insurance. Applicant shall furnish or cause to be furnished to Agency evidence satisfactory to Agency that Applicant and any



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contractor with whom it has contracted for the performance of the Work or otherwise pursuant to this Agreement carries Workers' Compensation Insurance as required by law.

6. Compliance with Laws. Applicant shall carry out the Work in conformity with all applicable laws, including the City's zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Applicant acknowledges that the requirements of the State of California prevailing wage law (Labor Code section 1720, *et seq.*) applies to all of the Work. Applicant shall cause its contractors and subcontractors to comply with all requirements of such prevailing wage law.

7. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

Agency: San Bruno Redevelopment Agency
567 El Camino Real
San Bruno, CA 94066
Attn: Housing & Redevelopment Manager

Applicant: _____

Either party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

8. Default.

8.1 Any failure by Applicant to perform any term or provision of this Agreement shall constitute an "Event of Default" if Applicant does not cure such failure within thirty (30) days following written notice of default from Agency. Upon the occurrence of an Event of Default, Agency shall have the right, in addition to any other rights or remedies (a) to institute any action at law or in equity to cure, correct, prevent or remedy any Event of Default; (b) to recover damages for any Event of Default; or (c) to terminate this Agreement by written notice to Applicant. In the event Agency terminates this Agreement as provided above, neither party shall have any further rights or obligations hereunder, except for Applicant's indemnity obligations under Section 4, which shall survive such termination.

8.2 Any failure or delay by Agency in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or



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remedies or deprive Agency of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. Miscellaneous Terms and Provisions.

9.1 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

9.2 Agreement is Final Contract. This Agreement, together with Agency's Building Façade Program Guidelines, represents the entire understanding of Applicant and Agency as to those matters contained herein. In the event of any conflict between the provisions of this Agreement and the Building Façade Program Guidelines, the provisions of this Agreement shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

9.3 No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement. Nothing herein shall be construed to create a partnership, joint venture or similar arrangement between the parties hereto.

9.4 Governing Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement without reference to principles of conflict of laws. Venue for any action brought under this Agreement shall be in the Superior Court of San Mateo County, California.

9.5 Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

9.6 No Agency Relationship. Neither Applicant nor any of Applicant's agents, contractors or subcontractors are or shall be considered to be agents of Agency in connection with the performance of any of Applicant's obligations under this Agreement.



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IN WITNESS WHEREOF, Agency and Applicant have caused this Agreement to be executed as of the dates set forth below.

“AGENCY”

SAN BRUNO REDEVELOPMENT AGENCY,
a public body corporate and politic

Dated: _____, 2004

By: _____

Its: _____

“APPLICANT”

_____,
a _____

Dated: _____, 2004

By: _____

Its: _____